



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/334,891	06/17/99	GHISOLFI	G 32461/GM/1P
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AIR MAIL

EXAMINER

PATTERSON, M

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

02/12/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/334,891

Applicant(s)

GHISOLFI, GUIDO

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☒ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin, Jr. in view of Joosten, Ochi et al. and The Encyclopedia of Polymer Science and Engineering. (Volume 12, page 214, 1985). Martin, Jr discloses a multilayer structure used for the production of milk and fruit juice containers (column 5, lines 43 – 52). The structure comprises a paperboard substrate to which is laminated a coextruded, dual layer polyester film, one surface of which is essentially crystalline and the other of which is essentially non – crystalline. The non – crystalline layer of the film, which forms the innermost layer of the container, has a significantly lower melting point than the crystalline layer, and is heat sealable (column 7, lines 16 – 50; column 8, lines 14 – 25). The crystalline layer of the film may be metallized (e.g. with aluminum or lithium; this also provides gas barrier properties), and this surface may then be extrusion (hot) laminated to the substrate (column 9, lines 11 – 29). The material has creased on it a pattern suitable to develop by folding. (Figure 2).

Martin, Jr fails to disclose a substrate which is a polyethylene terephthalate foam. Joosten teaches that a foamed thermoplastic is equivalent to paperboard in the fabrication of fruit juice containers (Abstract; page 6, lines 4 – 17). Ochi et al. teach a container which is fabricated from polyethylene terephthalate foam, in order to make the container recyclable (Abstract). It would therefore have been obvious to one of ordinary skill in the art at the time Applicant's invention

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was made to use polyethylene terephthalate rather than paperboard in the invention of Martin Jr. for the purpose of making the container recyclable.

Martin, Jr also fails to disclose a heat sealable film which is a polyethylene terephthalate – isophthalate copolymer. The Encyclopedia of Polymer Science and Engineering (Volume 12, page 214, 1985) teaches that it is known in the art to use polyethylene terephthalate – isophthalate copolymer instead of polyethylene terephthalate as the outer layer of a heat sealable polyester film in order to obtain a film having a lower softening and melting point. It would therefore have been obvious to one of ordinary skill in the art to use a polyethylene terephthalate – isophthalate copolymer as the outer layer of the heat sealable film in the invention of Martin , Jr. in order to obtain a package which is heat sealable at a lower temperature.

Martin, Jr also fails to disclose the thicknesses of the metal layer (which determines the oxygen permeability) and the total thickness of the composition. The thicknesses of the individual layers, as well as the density of the substrate layer, and the amount of copolymerized polyethylene isophthalate (which determines the melting point of the heat sealable layer) would readily be determined through routine experimentation by one having ordinary skill in the art, depending on the desired result. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Normally, it is to be expected that a change in size, amount or thickness would be an unpatenable modification. Under some circumstances, however, changes such as these may impart patentability to an apparatus if the particular size claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).


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Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, ~~Ellis~~ ^{Pyon} ~~Harold~~ ³⁰⁸⁻⁴²⁵¹ Robinson, can be reached at (703) ~~308-2364~~. FAX communications should be sent to (703) 305-3599. FAXs received after 4 P.M. will not be processed until the following business day.

M.A.P.

m.a.p.


HAROLD PYON
SUPERVISORY PATENT EXAMINER